

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

OPTISTREAMS, INC.,) 1:05-cv-00117-REC-SMS
Plaintiff,)
v.) ORDER GRANTING MOTION OF DAVID A.
SEAN GAHAN, et al.,) ROBERTS TO WITHDRAW AS COUNSEL
Defendants.) FOR PLAINTIFF AND COUNTER-
) DEFENDANT OPTISTREAMS, INC. (DOC.
) 56)
SEAN GAHAN,)
Counter-Claimant,) INFORMATIONAL ORDER TO PARTY AND
v.) COUNSEL
OPTISTREAMS, INC.,) ORDER REQUIRING CORPORATE PARTY
Counter-Defendant.) TO HAVE COUNSEL SUBSTITUTE IN TO
) THIS ACTION NO LATER THAN THIRTY
) DAYS AFTER THE DATE OF SERVICE OF
) THIS ORDER
)
) ORDER SETTING STATUS CONFERENCE
) **DATE: FRIDAY, JANUARY 20, 2006**
) **TIME: 11:00 A.M.**
) **Courtroom: 4**

ORDER DIRECTING THE CLERK TO MAIL
A COPY OF THIS ORDER TO PLAINTIFF
AND COUNTER-DEFENDANT

The motion of David A. Roberts and Caswell, Bell & Hillison,
LLP to withdraw as attorney of record for Plaintiff and Counter-
Defendant Optistreams, Inc., came on for hearing after the
Court's having shortened time for notice, on December 7, 2005, at
1:35 p.m. in Courtroom 4 before the Honorable Sandra M. Snyder,

1 United States Magistrate Judge. David A. Roberts appeared; Howard
2 Sagaser appeared on behalf of Defendant and Counter-Claimant Sean
3 Gahan; and no other person appeared. The matter was submitted to
4 the Court on the notice of motion and motion, points and
5 authorities, and declaration submitted in support of the motion,
6 which had been served by telefax as directed by the court and by
7 hand on Plaintiff and Counter-Defendant Optistreams; and on the
8 notice of non-opposition if certain safeguards were included,
9 which was filed by Defendant and Counter-Claimant Sean Gahan.

10 I. Granting of Motion to Withdraw

11 Local Rule 83-182 provides that an attorney may request
12 withdrawal if grounds exist pursuant to the Rules of Professional
13 Conduct of the State Bar of California. RPC 3-700(A) provides in
14 substance that a member must obtain permission to withdraw if
15 rules of a tribunal require it; a member shall not withdraw from
16 employment until the member has taken reasonable steps to avoid
17 reasonably foreseeable prejudice to the rights of the client,
18 including giving due notice to the client, allowing time for
19 employment of other counsel, promptly releasing papers and
20 property, and complying with applicable laws and rules. RPC 3-
21 700(C) 910(f) permits withdrawal if the client breaches an
22 agreement or obligation to the members as to expenses or fees.
23 RPC 3-700(C) (1) (d) permits withdrawal if the client by his or her
24 conduct renders it unreasonably difficult for the member to carry
25 out the employment effectively; Rule 3-700(C) (6) permits
26 withdrawal if the member believes in good faith in a proceeding
27 pending before a tribunal that the tribunal will find he
28 existence of good cause for withdrawal.

1 It is concluded that good cause for permitting withdrawal
2 has been shown. There is no opposition to the motion.

3 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the motion
4 of David A. Roberts to withdraw as attorney of record for
5 Plaintiff and Counter-Defendant Optistreams, Inc. is GRANTED, and
6 whose last known mailing address is:

7 Optistreams, Inc.
8 7545 North Del Mar Avenue, Suite 203
9 Fresno, California 93711.

10 Telephone (559) 440-1334

11 The Clerk IS DIRECTED to mail a copy of this order to the
12 Plaintiff and Counter-Defendant, Optistreams, Inc., at the last
13 known mailing address stated hereinabove.

14 II. Informational Order

15 The parties and counsel ARE INFORMED that Local Rule 5-
135(g) states:

16 All attorneys who wish to file documents in the Eastern
17 District of California must be admitted to practice or
18 admitted to appear pro hac vice. Admission to practice
19 in the Eastern District of California includes the
20 requirement that the attorney complete an e-filing
21 registration form and receive a username and password.
22 Completion of the registration form will permit
23 electronic filing of documents and, unless an attorney
24 opts out, will authorize acceptance of service by
25 electronic means. To do this an attorney must have a valid
internet e-mail address. After registration, attorneys
will receive a unique user name and password. Registration
enables an attorney to file documents electronically with
the Clerk. The court registration name and password
when utilized for the electronic filing of documents with
the Clerk will serve as the party's signature for
Fed. R. Civ. P. Rule 11 purposes. See also L.R. 7-131.
In conjunction with the court filing registration
requirement, registration for PACER, see L.R. 5-135(g)(3),
is also mandated in order to permit access to images of
documents maintained within court electronic records.

27 **Plaintiff and Counter-Defendant Optistreams, Inc., is**
28 **advised that failure to take appropriate legal action may result**

1 in serious legal consequences, and consideration of obtaining
2 legal assistance is strongly advised. Further, if Plaintiff is a
3 corporation, Plaintiff must obtain legal counsel. Corporations
4 may participate in this action only through legal counsel.

5 III. Scheduled Discovery and Other Dates

6 With respect to depositions set by Defendant and Counter-
7 Claimant presently scheduled for December 12 and 19, 2005,
8 Defendant's counsel agreed to cancel them for a brief delay
9 before resetting them in order to permit Plaintiff and Counter-
10 defendant Optistreams, Inc., to obtain new counsel. This was done
11 with the understanding that Defendant would be fully protected
12 from the presently set discovery cutoff and expert disclosure
13 dates of December 30 and January 14, respectively. The Court
14 further noted that it was inclined to impose the costs of re-
15 noticing and rescheduling these depositions on Plaintiff and
16 Counter-defendant Optistreams, Inc., upon application therefor by
17 Defendant.

18 IV. Deadline for New Counsel to Substitute in to Action

19 The Court has determined that Plaintiff Optistreams, Inc.,
20 shall have a reasonable time within which to procure new counsel.
21 New counsel for Plaintiff and Counter-defendant Optistreams,
22 Inc., shall substitute in as counsel of record in this action no
23 later than thirty days after the date this order is served.

24 Plaintiff IS INFORMED that a failure to comply with this
25 order will result in a recommendation that this action be
26 dismissed, and that dismissal could result from such a
27 recommendation.

28 V. Status Conference

1 In order to consider scheduling, discovery, and any other
2 pertinent matters, it IS ORDERED that a status conference BE HELD
3 on Friday, January 20, 2006, at 11:00 a.m., in the courtroom of
4 the undersigned Magistrate Judge. Either personal or telephonic
5 appearances of counsel will be permitted.

6

7 IT IS SO ORDERED.

8 **Dated:** December 7, 2005
9 icido3

/s/ Sandra M. Snyder
 UNITED STATES MAGISTRATE JUDGE